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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,130	10/18/2001	Robert M. Rello	A-1674	2064
33197	7590	08/13/2004	EXAMINER	
STOUT, UXA, BUYAN & MULLINS LLP			PURVIS, SUE A	
4 VENTURE, SUITE 300				
IRVINE, CA 92618			ART UNIT	PAPER NUMBER
			1734	

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

my

<b>Office Action Summary</b>	<b>Application No.</b> 10/042,130	<b>Applicant(s)</b> RELLO ET AL.	
	<b>Examiner</b> Sue A. Purvis	<b>Art Unit</b> 1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6,10,12 and 13 is/are allowed.
- 6) ☒ Claim(s) 3,4,7,8 and 11 is/are rejected.
- 7) ☒ Claim(s) 5,9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
       Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickey (US Patent No. 5,160,570) in view of Andrew (US Patent No. 5,107,978) and Trine Quick Change 4500 or NJM Thorobred 350.

Dickey discloses a labeling apparatus with a conveyor (6) for moving the articles to be labeled, an infeed screw (3), a rotatable starwheel (5), a rotatable vacuum drum, and a supply of roll fed labels (20). (Col. 2, lines 48-68; Col. 3, lines 21-25.)

Dickey does not detail the drive means of the infeed screw or disclose a means for pivoting the feed screw through a range of motion both horizontally and vertically.

Andrew discloses a distribution apparatus which uses feed screws (20). The feed screws (20) are adjustably mounted both for height above the conveyor (10) and for horizontal distance between their centers to accommodate different height and different width articles being distributed. Andrew also discloses pulleys (52) and drive belts (53) provide for the transmission of power from the crown gear drives (49, 51) to their respective timing screws. (Col. 3, lines 55-63; Col. 5, lines 3-20.)

Both NJM and Trine pamphlets disclose labeling machines which are adaptable for labeling articles of different sizes. Both discuss the use of changing parts.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Dickey adaptable for labeling articles of different sizes by having the feed screw adjustable both horizontally and vertically as taught by Andrew. Both Trine and NJM teach that it is known in the art to have a labeling machine be modified to adapt to labeling articles of different sizes. These pamphlets, however, discuss using interchangeable parts. It is within the purview of the artisan to know that a more efficient means of adapting a machine to change for articles of variable sizes would be to make the infeed screw of the labeling machine able to shift as shown in Andrew.

Regarding the gear drive, Andrew discloses pulleys and drive belts in combination with gear drives (49, 51) to rotate the feed screws (20).

Regarding claim 7, Andrew includes the feed screws being mounted on a frame (16) which is considered to be equivalent to applicant's 'cradle bar'.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickey in view of Andrew and Trine or NJM as applied to claim 3 above, and further in view of McCormick (US Patent No. 4,556,445).

Dickey in view of Andrew and Trine or NJM does not disclose using a jack to drive the feed screws. Andrew discloses gear drives (49, 51) but does not disclose whether it is a gear box and does not include a jack shaft.

McCormick discloses a feed screw assembly for a pair of horizontally disposed feed screws. Both of the feed screws are driven by a feed screw drive train which includes a gear box (26) and flexible shafts (28a, 28b), which connect gear box (26) to the can end feed screw (20) and the can body feed screw (22), respectively. (Col. 3, lines 46-58.)

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It would have been obvious to one having ordinary skill in the art at the time the invention was made that a gear box in combination with a "jack" shaft can be used in the device of Dickey in view of Andrew and Trine or NJM, because McCormick shows it as an alternative way of driving the screws.

4. Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickey in view of Andrew and Trine or NJM as applied to claim 3 above, and further in view of Crankshaw (US Patent No. 5,050,720).

Dickey in view of Andrew and Trine or NJM does not include fixed handles.

Crankshaw discloses the use of handles (47) to allow the operator to disengage the feed screw. (Col. 5, lines 42-48.)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include handles in the device of Dickey in view of Andrew and Trine or NJM, because Crankshaw teaches that it is advantageous to have a means for the operate to remove the screw and a handle allows the operate to remove the screw quickly.

Regarding claim 11, while pulleys and drive belts in combination with gear drives are used to rotate the feed screws in Andrew, Crankshaw shows that a beltless gear drive system is known and within the purview of the artisan.

### ***Response to Arguments***

5. Regarding the use of NJM and Trine pamphlets in the above rejection, these references teach that it is known to have labeling machines which are adaptable for labeling articles of different sizes, but they specifically teach using changeable parts. However, an alternative to using changeable parts would be to have the parts of the labeling machine be adjustable, this is taught in McCormick. As for applicant's argument that there would be no motivation to apply the teachings of Andrew to Dickey, the examiner disagrees. The

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motivation used by the examiner comes from the NJM & Trine pamphlets. In particular, that it is known to have labeling machines adaptable for different sized containers, which is what would occur if the infeed screws of Dickey were made pivotable both horizontally and vertically as is done in Andrew.

6. Regarding applicant's argument that Andrew does not disclose pivoting through a "range of motion" as set forth in the claims, the screws in Andrew pivot both horizontally and vertically as admitted by the applicant on the second page of their arguments. Furthermore, any pivoting would result in the screws going through a "range of motion" thus the addition of such language to the claim does not add any structural or functional feature to the claim.

7. Applicant's arguments with respect to the "range of motion" fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

#### ***Allowable Subject Matter***

8. Claims 5 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 6, 10, 12, and 13 are allowed.

10. The following is an examiner's statement of reasons for allowance: Detailed in the Office Action dated 03 December 2003

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany

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the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

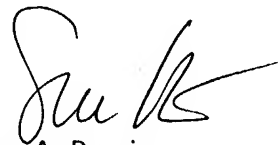
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is (571) 272-1236. The examiner can normally be reached on Monday through Friday 9am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A. Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Sue Purvis', with a stylized flourish at the end.

Sue A. Purvis  
Primary Examiner  
Art Unit 1734

SP  
August 11, 2004